



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2012

Mr. Nathan L. Brown
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-11837

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 460325.

The El Paso Police Department (the "department") received a request for all reports relating to violence or harassment from the year 1990 to the year 2012 involving a specified arrestee. You state the department has released redacted copies of the responsive computer-assisted-dispatch ("CAD") reports and 9-1-1 call transcripts. You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not involve the specified person as an arrestee. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.¹

Next, we note you have redacted the telephone numbers and addresses of 9-1-1 callers in the submitted CAD reports and 9-1-1 transcripts. In Open Records Letter No. 2003-0708 (2003), this office issued a previous determination authorizing the department to withhold the originating telephone numbers and addresses of 9-1-1 callers furnished by a service

¹As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code without requesting a decision from this office. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, to the extent the information you have marked, in addition to the information we have marked, consists of the originating telephone numbers and addresses of 9-1-1 callers furnished by a service supplier established in accordance with chapter 772, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 2003-0708.

You indicate the department has redacted information in accordance with Open Records Decision No. 684 (2009) and section 552.130 of the Government Code. On September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). However, the amendments are limited to the information described in subsections 552.130(a)(1) and (a)(3) and do not permit a governmental body to redact information described in subsection 552.130(a)(2) regarding motor vehicle titles and registration, such as a license plate number or vehicle identification number, without asking the attorney general for a decision. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold Texas license plate numbers, under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, neither section 552.130 nor Open Records Decision No. 684 authorizes the department to redact the vehicle identification numbers you have redacted under section 552.130 without requesting a ruling from this office. As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, based on the information you submitted, we can discern the nature of the redacted information at issue. In the future, however, the department should refrain from the unauthorized redaction of responsive information that it submits to this office in seeking an open records ruling. Failure to do so may result in the presumption that the redacted information is public. See *id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial

information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Further, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

You assert the request implicates the named individual's right to privacy because the requestor is seeking the criminal history records of someone other than herself. However, after reviewing the request and the submitted information, we find the requestor is seeking specific reports involving the requestor and the named individual. Accordingly, the request does not implicate the named individual's right to privacy, and the submitted responsive information may not be withheld on this basis. Nevertheless, upon review, we find portions of the submitted responsive information are highly intimate or embarrassing and not of legitimate public concern. Therefore, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, none of the remaining information consists of information which is highly intimate or embarrassing and of no legitimate public concern. Accordingly, none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); *see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the remaining responsive information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the department may not withhold any of the remaining

responsive information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted incident reports pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to the submitted responsive incident reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We note basic information includes a detailed description of the offense, but does not include motor vehicle information encompassed by section 552.130 of the Government Code. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public *Houston Chronicle*). Thus, with the exception of the basic front page offense and arrest information, you may withhold the submitted responsive incident reports from disclosure based on section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, to the extent the marked telephone numbers and addresses of 9-1-1 callers were supplied by a service supplier established in accordance with chapter 772, they must be withheld under section 552.101 of the Government Code in conjunction with section 772.318 of the Health and Safety Code in accordance with the previous determination issued to the department in Open Records Letter No. 2003-0708. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the motor vehicle record information we have marked under section 552.130 of the Government Code. With the exception of the basic information, the department may withhold the submitted responsive incident reports from disclosure based

on section 552.108(a)(2) of the Government Code. The remaining responsive information must be released.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 460325

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information to be released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).